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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,317	06/19/2006	Bodo W. Lambertz	DD-26009	5864
2387	7590	01/25/2008		
Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606			EXAMINER SOLD, JENA A	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			01/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,317

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Jena A. Sold

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "X-cross bandage" (claim 12) must be shown or the feature canceled from the claim. No new matter should be entered.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: pads 4.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words.

5. The abstract of the disclosure is objected to because it falls short of the 50-word minimum. Correction is required. See MPEP § 608.01(b).
6. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

7. Claims 3 and 14 are objected to because they are identical. Likewise, claims 5 and 15 are objected to because they are likewise identical. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. Claim 1 recites the limitation "the arrangement of pads in the shoe". There is insufficient antecedent basis for the limitation "the shoe" because "the shoe" refers to an element of the invention that has not been previously introduced. As applicant has not claimed "a shoe", the specific limitations intended by "the shoe" have not been defined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 8, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151). Lambertz discloses a heat-regulating sock having the following pads: instep padding 5, padded shin cushion 6, Achilles tendon padded cushion 7, and calf paddings 8 (column 2, lines 34-49). As applicant is claiming only a sock, the limitation "...that the arrangement of the pads (2) in the sock (1) is coordinated with the arrangement of pads in the shoe" is determined as functional language. Thus, said paddings of Lambertz are capable of coordinating with the arrangement of padding in a shoe. Additionally, as applicant discloses that padding is conventionally provided in shoes – for instance, on the shoe tongue, the heel, and the ankle - to reduce the pressure load, the padding of Lambertz would necessarily coordinate in some way with

said conventional shoe padding, either by overlapping said padding or being disposed in areas where the shoe pads do not extend.

10. Regarding claim 8, Lambertz discloses the paddings consisting of hollow-core fibers which are coated with wool or cotton threads.

11. Regarding claim 12, Lambertz discloses X-cross support band 9 (column 2, lines 53-54).

12. Regarding claim 13, Lambertz discloses sock 1 having air channel 3 (column 2, lines 25-29).

13. Claims 1, 4-7 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Etienne (US 4,811,727). Regarding claims 1 and 4, Etienne discloses a stocking 1, applicant's sock, comprising two pads 10, 11 which are bean-shaped and fill up the retromalleolar cavity on either side of the Achilles tendon with sock body 14, applicant's web material, disposed between said pads 10,11 (column 4, lines 42-53). As applicant discloses padding is conventionally provided in shoes – such as around the heel - to reduce the pressure load, pads 10, 11 of Etienne would necessarily coordinate in some way with said conventional shoe padding, either by overlapping said padding or being disposed in areas where the shoe pads do not extend.

14. Regarding claims 5 and 15, as pads 10, 11 “fill up the retro-malleolar cavity 12, 13 on either side of the body 14 of the Achilles tendon” and “fit closely into the anatomy of the two depressions” (column 4, lines 44-51), said pads 10, 11 necessarily protrude beyond the web disposed therebetween.

15. Regarding claims 6 and 7, as applicant fails to disclose the necessary characteristics of a "climate-regulating fabric", Examiner interprets a "climate-regulating fabric" to be any fabric capable of regulating the climatic conditions (temperature, moisture, etc.) of the area it surrounds. As all fabrics retain heat to some extent, the fabric of Etienne necessarily regulates the climate surrounding the foot, when worn.

16. Claims 1-3, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Brother et al. (US 6,234,988). Regarding claim 1, Brother et al. a cushioning device for a wearer's foot comprising device 10, applicant's sock, having medial and lateral instep pads 12, 13 affixed to foot piece 18 (Figure 3) and medial and lateral ankle pads 14, 16 affixed to ankle piece 16 (column 5, line 61 – column 6, line 4). Brother further discloses the instep pads fill any voids between the user's foot and the user's footwear, thus allowing the user to achieve greater unity with the footwear (column 6, lines 5-9). Likewise, the ankle pads fill any voids between the user's ankle and the footwear, thus permitting the user more intimate and complete contact between the ankle and footwear (column 6, lines 47-53). Thus, the arrangement of pads in the sock coordinates with the natural padding and shape of a shoe by filling in the gaps between a wearer's foot and the footwear.

17. Regarding claims 2, 3, and 14, Brother et al., as visible in Figure 3 and previously discussed, discloses medial and lateral instep pads 12, 13 between which a portion of foot piece 18, applicant's web, is provided. As applicant fails to specifically disclose what is meant by "absorbent pads", Examiner interprets any padding having a "shock-

absorbing effect" to satisfy this limitation. As the instep pads of Brother distribute compressive load forces (column 6, lines 17-20) and redirect pressure (column 6, lines 45-46), said pads are absorbent as previously defined. Additionally, Brother Discloses the pads being between 3/32" and 1" thick, thus necessarily protruding beyond the web.

18. Regarding claim 11, as visible in Figure 1 and previously discussed, Brother discloses ankle pads located over the ankle bone wherein the ankle pads comprise a larger ellipse having a smaller ellipse therein, and thus anticipates applicant's "ring-shaped pad" (column 6, lines 45-64).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brother (US 6,234,988) in view of Lambertz (US 6,234,988). Brother discloses the invention substantially as claimed and as previously discussed including instep pads 12, 13.

While Brother discloses the desired padding comprising packets of compressible, semi-liquid materials having a plurality of microspheres (column 7, lines 21-24), Brother additionally discloses the padding may include liquids, gels and/or open or closed cell foam, or any other natural or synthetic cushioning or padding material (column 8, lines

57-62). Thus, while Brother fails to explicitly disclose the pads made of hollow chamber fibers covered with spun wool or cotton, Brother does disclose the pads made of any natural or synthetic cushioning or padding material. Lambertz teaches a padding material for sock garments consisting of hollow-core fibers which are coated with threads of wool or cotton (column 3, lines 18-20). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the padding of Brother, which may comprise any natural or synthetic padding material, from the padding material taught by Lambertz, because said material is particularly effective in damping shocks and pressure (column 3, lines 18-22).

20. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Etienne (US 4,811,727) in view of Lambertz (US 6,234,988). Etienne discloses the invention substantially as claimed and as previously discussed including a sock having two spaced pads in the area of the heel, said spacer pads providing support and relief from shock vibrations (column 4, lines 46-50). Etienne, however, fails to disclose the material from which said spacer pads are fabricated. Lambertz teaches a sock having pads consisting of hollow-core fibers which are coated with threads of wool or cotton (column 3, lines 18-20). It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate the spacer pads of Etienne from the material taught by Lambertz because said material is particularly effective in damping shocks and pressure (column 3, lines 18-22).

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form 892 enclosed herewith.
22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jena A. Sold whose telephone number is (571) 272-8610. The examiner can normally be reached on Mon. - Fri. 9:00 A.M. to 5:00 P.M..
23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765